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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,946	12/29/2003	Edward John Giblin	C6664(C)	7892

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EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/748,946

Applicant(s)

GIBLIN ET AL.

Examiner

Marc A. Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11,14-16,20,21,23,27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11,14-16,20,21,23,27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**NEW REJECTIONS**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 11, 20 – 21, 23 and 27 – 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Heydarpour et al (U.S. Patent No. 5,843,540).

With regard to Claims 11, 20 and 27 – 28, Heydarpour et al disclose a container for flowable material (column 5, lines 27 – 33) comprising an outer layer (exterior layer; column 6, lines 45 – 51) comprising a metallocene polyethylene with density from 0.91 to 0.95 g/cm<sup>3</sup> (column 6, lines 45 – 51) in the amount of 25 to 75% by weight, and of a homopolymer polyethylene (10 to 100 parts of the metallocene polyethylene and 0 to 90 parts of a polyethylene material, therefore a polyethylene homopolymer; column 6, lines 45 – 51) having a density greater than 0.957 g/cm<sup>3</sup> (column 14, lines 10 – 12), and an inner layer (interior layer; column 6, lines 19 – 21) and a middle layer (core layer; column 6, lines 57 – 58); the middle layer is 99.9 microns in thickness, and the inner and outer layers are 20 microns in thickness (column 7, lines 5 – 10); the outer and inner layers therefore each comprise 5 to 20% of the total thickness of the wall of the container and the middle layer comprises 70 – 80% of the total thickness of the wall of the bottle; Heydarpour et al disclose that the container is recyclable (column 1, line 34) and is used by a consumer (column 1, lines 19 – 20) and Heydarpour et al therefore disclose a container

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which is completely recycled post consumer; the container therefore comprises a middle layer comprising 100% post consumer recycled resin; Heydarpour et al disclose the interchangeability of the container with a plastic bottle (the container is an alternative to a plastic bottle; column 2, lines 1 – 3), and Heydarpour et al therefore disclose a bottle having the layer structure; because Heydarpour et al disclose a bottle which is identical to the claimed bottle, the claimed aspect of the 25% transmittance of light in the visible spectrum being seen through the wall is inherent to Heydarpour et al.

With regard to Claim 21, Heydarpour et al disclose a middle layer comprising high density polyethylene (Heydarpour et al disclose a density greater than  $0.930 \text{ g/cm}^3$  and disclose high density polyethylene as a polyethylene of the invention; column 10, lines 25 – 35 and column 13, lines 60 – 63); and disclose the use of additional middle layers (column 6, line 67); Heydarpour et al therefore disclose a middle layer comprising virgin high density polyethylene.

With regard to Claim 23, Heydarpour et al disclose the use of additional middle layers, as stated above, and therefore disclose the use of two additional middle layers; the inner and outer layers therefore each comprise 5 – 10% of the total thickness of the wall of the bottle.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 14 – 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heydarpour et al (U.S. Patent No. 5,843,540) in view of D' Alessandro (U.S. Patent No. 4,068,663).

Heydarpour et al disclose a bottle comprising an outer layer comprising 10% polyethylene by weight as discussed above. With regard to Claims 14 – 16, Heydarpour et al fail to disclose a bottle comprising an outer layer comprising polypropylene.

D' Alessandro discloses the interchangeability of polyethylene and polypropylene in the making of a bottle for the purpose of making a bottle for containment water (column 3, lines 4 – 9). One of ordinary skill in the art would therefore have recognized the advantage of providing for the polypropylene of D' Alessandro in Heydarpour et al, which comprises a bottle, depending on the desired containment of water of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for polypropylene in Heydarpour et al in order to obtain a bottle for containment water as taught by D' Alessandro.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Marc Patterson 3/21/06*  
Marc A. Patterson, PhD.  
Primary Examiner  
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